

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GARY HERMAN,

Plaintiff,

ANSWER

-against-

Docket No. 07-CV-11108(BSJ)(HBP)

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, et al.

Defendants.

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Defendant City of New York¹, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its Answer to the Complaint, respectfully allege, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph “1” of the Complaint, except admit that plaintiff purports to bring this action and to invoke the Court’s jurisdiction as stated therein.
2. Denies the allegations set forth in paragraph “2” of the Complaint, except admit that plaintiff purports to proceed as stated therein.
3. Denies the allegations set forth in paragraph “3” of the Complaint, except admit that plaintiff purports to bring this action and to invoke the Court’s jurisdiction as stated therein.
4. Denies the allegations set forth in paragraph “4” of the Complaint, except admit that plaintiff purports to base venue as stated therein.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “5” of the Complaint.
6. Denies the allegations set forth in paragraph “6” of the Complaint, except

¹ Upon information and belief, Correction Officer Rodriguez has not been served with the Summons and Complaint to date and accordingly is not a defendant at this time.

admits that defendant City of New York is a municipal entity created and authorized under the laws of the State of New York.

7. Denies the allegations set forth in paragraph “7” of the Complaint, except admit that the City of New York employs Correction Officer Rodriguez.

8. Denies the allegations set forth in paragraph “8 ” of the Complaint, except admit that the City of New York maintains the New York City Department of Corrections and respectfully refers the Court to the New York City Charter and Administrative Code for the relationship between defendant City and the New York City Department of Corrections.

9. Denies the allegations set forth in paragraph “9 ” of the Complaint, except admit that the City of New York maintains the New York City Department of Corrections and respectfully refers the Court to the New York City Charter and Administrative Code for the relationship between defendant City and the New York City Department of Corrections.

10. Denies the allegations set forth in paragraph “10” of the Complaint, except admit that plaintiff purports to proceed as stated therein.

11. The allegations set forth in paragraph “11” of the Complaint constitute legal conclusions to which no response is required

12. Admit that the plaintiff was incarcerated at the Barge in Bronx County, New York.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Denies the allegations set forth in paragraph “14” of the Complaint.

15. Denies the allegations set forth in paragraph “15” of the Complaint.

16. Denies the allegations set forth in paragraph “16” of the Complaint.

17. Denies the allegations set forth in paragraph “17” of the Complaint.

18. Denies the allegations set forth in paragraph “18” of the Complaint.

19. Denies the allegations set forth in paragraph “19” of the Complaint.

20. Denies the allegations set forth in paragraph “20” of the Complaint.

21. Denies the allegations set forth in paragraph “21” of the Complaint.

22. Denies the allegations set forth in paragraph “22” of the Complaint.

23. Denies the allegations set forth in paragraph “23” of the Complaint.

24. Denies the allegations set forth in paragraph “24” of the Complaint.

25. In response to the allegations set forth in paragraph “25” of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this Answer, as if fully set forth herein.

26. Denies the allegations set forth in paragraph “26” of the Complaint.

27. Denies the allegations set forth in paragraph “27” of the Complaint.

28. Denies the allegations set forth in paragraph “28” of the Complaint.

29. Denies the allegations set forth in paragraph “29” of the Complaint.

30. Denies the allegations set forth in paragraph “30” of the Complaint.

31. Denies the allegations set forth in paragraph “31” of the Complaint.

32. In response to the allegations set forth in paragraph “32” of the Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs inclusive of this answer, as if fully set forth herein.

33. Denies the allegations set forth in paragraph “33” of the Complaint.

34. Denies the allegations set forth in paragraph “34” of the Complaint.

35. Denies the allegations set forth in paragraph “35” of the Complaint.

36. Denies the allegations set forth in paragraph “36” of the Complaint.

37. Denies the allegations set forth in paragraph “37” of the Complaint.

38. Denies the allegations set forth in paragraph “38” of the Complaint.

39. Denies the allegations set forth in paragraph “39” of the Complaint.

AS AN FOR A FIRST AFFIRMATIVE DEFENSE

40. The Complaint fails to state a claim upon which relief can be granted.

AS AN FOR A SECOND AFFIRMATIVE DEFENSE

41. Defendant City of New York has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AN FOR A THIRD AFFIRMATIVE DEFENSE

42. Plaintiff caused or provoked any incident.

AS AN FOR A FOURTH AFFIRMATIVE DEFENSE

43. At all times relevant to the acts alleged in the Complaint, the duties and functions of the City’s officials entailed the reasonable exercise of their proper and lawful discretion. Therefore, defendants have governmental immunity from liability.

AS AN FOR A FIFTH AFFIRMATIVE DEFENSE

44. Punitive damages cannot be awarded against the City of New York.

AS AN FOR A SIXTH AFFIRMATIVE DEFENSE

45. Any force used against the plaintiff was reasonable, necessary and justified in order to accomplish the official duties of any agent or employee of the defendant and to protect their own physical safety and the physical safety of others.

AS AN FOR A SEVENTH AFFIRMATIVE DEFENSE

46. Any state law claims are barred by the Statute of Limitations.

AS AN FOR AN EIGHTH AFFIRMATIVE DEFENSE

47. Plaintiff failed to comply with the General Municipal Law § 50 - e and 50 - i.

AS AN FOR A NINTH AFFIRMATIVE DEFENSE

48. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendants.

WHEREFORE, defendants request judgment dismissing the Complaint in its entirety, together with costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 29, 2008

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